

FILED
U.S. DISTRICT COURT

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1801 California Street, Suite 1500
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DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

SO ORDERED

Dee Benson

DEE BENSON
United States District Judge

Thomas M. Melton, Esq.

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Securities and Exchange Commission
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DATE December 13, 2011

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff

v.

Jeffrey L. Mowen, Thomas R. Fry,
Bevan J. Wilde, Gary W. Hansen, Michael
G. Butcher, James B. Mooring, David G.
Bartholomew, and Michael W. Averett,

Defendants,

Erin O'Malley f/k/a Erin O. Mowen,

Relief Defendant.

PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT
AGAINST DEFENDANT
DAVID G. BARTHOLOMEW

Case No. 2:09-cv-00786-DB

District Court Judge Dee Benson

Magistrate Judge Paul M. Warner

Plaintiff, Securities and Exchange Commission, moves pursuant to Fed. R. Civ. P. 56(a) and DU CivR 56-1 for summary judgment against defendant David G. Bartholomew (“Bartholomew”) on all counts of the Complaint. Bartholomew, through his company LOA Capital LLC, offered and sold over \$6.7 million of unregistered promissory notes (*i.e.* securities) to investors, in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) – Count 3. In selling those securities, Bartholomew acted as an unregistered broker-dealer, in violation of Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) – Count 4. Further, Bartholomew’s offering memorandum under which he sold the securities, as well as his oral representations to investors, fraudulently contained multiple material misrepresentations and omissions, in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder – Counts 2 and 1, respectively.

The Memorandum of Law in Support of this Motion demonstrates that there is no disputed issue of material fact as to Bartholomew’s violations of the federal securities laws. The Memorandum also sets forth Bartholomew’s ill-gotten gains from his illegal conduct. The Commission therefore seeks summary judgment: 1) finding that Bartholomew violated Sections 10(b) and 15(a) of the Exchange Act, Rule 10b-5 thereunder, and Sections 5(a), 5(c), and 17(a) of the Securities Act; 2) enjoining Bartholomew from future violations of those provisions; 3) ordering disgorgement of Bartholomew’s ill-gotten gains of \$3,926,337; 4) ordering prejudgment interest of \$587,182 on that disgorgement; and 5) imposing a third-tier penalty to be determined by the Court.

Respectfully submitted this 16th day of November, 2011,

s/ Stephen C. McKenna
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CERTIFICATE OF SERVICE

I certify that on this 16th day of November, 2011, I caused a copy of the PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT DAVID G. BARTHOLOMEW to be served upon the following parties by Notice of Electronic Filing to their attorneys, who are registered users of ECF. For unrepresented parties, a copy was served via U.S. Mail.

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